

STATE OF MICHIGAN
COURT OF APPEALS

SEAN STEVEN SEYLER,

Plaintiff-Appellant,

v

CITY OF TROY and CITY OF TROY POLICE
DEPARTMENT,

Defendants-Appellees.

UNPUBLISHED
November 8, 2011

No. 297573
Oakland Circuit Court
LC No. 2009-105328-CZ

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Defendants City of Troy and City of Troy Police Department denied plaintiff Sean Steven Seyler's request for public records under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* The trial court granted summary disposition for defendants. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I

Officers of the City of Troy Police Department arrested plaintiff for drunk driving. Two days after the arrest, plaintiff made a FOIA request with the police department to obtain copies of, or an opportunity to view, the following: patrol car and booking room video and audio regarding the arrest; calibration logs for the preliminary breathalyzer used in the arrest; the arresting officers' preliminary notes and police reports regarding the arrest; his booking room photographs; any 911 recording related to the arrest; all radio dispatch recordings and log summaries relating to the arrest; redacted police reports from the arresting officers' last ten drunk driving arrests; the police department's inventory, videotaping, and drunk driving procedures; performance standards regarding drunk driving arrests; field sobriety test training manuals; and training records summaries, citizen complaints, and disciplinary reports concerning the arresting officers. The next day, the police department sent plaintiff a letter stating that it was "denying [his] FOIA request as exempt under MCLA 15.243 (1)(d)." In addition to the letter, plaintiff received a City of Troy FOIA request form stating that his FOIA request was "denied in full due to exemption as Public Record as defined by State Law." The form also stated that "MCL 15.243 (1)(d) is the reason for non-disclosure." Plaintiff then filed this action. Defendants subsequently filed a motion for summary disposition under MCR 2.116(C)(8) and (10), arguing that plaintiff's request circumvented criminal discovery and also that all of the requested

information had been provided to plaintiff or was statutorily exempt from disclosure. The trial court granted defendants' motion.

II

We review a trial court's decision on a motion for summary disposition de novo, viewing the evidence in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 118-120; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint, while a motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id.* at 119. Where a motion is brought under both MCR 2.116(C)(8) and (10) and both the parties and the trial court rely on matters outside the pleadings, as is the case here, MCR 2.116(C)(10) is the appropriate basis for review. *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). "The reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion." *Maiden*, 461 Mich at 121. If the evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id.* at 120.

In appeals under the FOIA, we review a trial court's legal determinations de novo, findings of fact for clear error, and decisions committed to the trial court's discretion for an abuse of discretion. *Herald Co, Inc v E Mich Univ Bd of Regents*, 475 Mich 463, 471-472; 719 NW2d 19 (2006). "Whether requested information fits within an exemption from disclosure under FOIA is a mixed question of fact and law." *Taylor v Lansing Bd of Water & Light*, 272 Mich App 200, 205; 725 NW2d 84 (2006).

MCL 15.231(2) articulates the purpose of the FOIA:

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

Thus, MCL 15.233(1) provides that a person has the right to inspect, copy, or receive copies of a public record "upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record." *Practical Political Consulting v Secretary of State*, 287 Mich App 434, 449; 789 NW2d 178 (2010). "The FOIA 'presumes records are disclosable,' and a public body may deny a request only upon a showing that the requested information falls within one of the exemptions in § 13 of the act." *Hagen v Dep't of Ed*, 431 Mich 118, 124; 427 NW2d 879 (1988). Exemptions to disclosure under § 13 (MCL 15.243) are narrowly construed, and the party seeking to invoke an exemption has the burden of demonstrating that nondisclosure accords with the intent of the Legislature. *Taylor*, 272 Mich App at 204-205; *Messenger v Consumer & Indus Servs*, 238 Mich App 524, 532; 606 NW2d 38 (1999).

Turning to plaintiff's claims of error, we first find that the Troy City Attorney's Office sent plaintiff some of the records that he requested. An appeal under the FOIA becomes moot when a public body releases the requested public record. *State News v Mich State Univ*, 481 Mich 692, 704 n 25; 753 NW2d 20 (2008); *Herald Co, Inc v Ann Arbor Pub Schs*, 224 Mich App 266, 270-271; 568 NW2d 411 (1997). Therefore, whether these records were exempt from disclosure is moot, and we decline to address the issue as it relates to received documents. *State News*, 481 Mich at 704 n 25; *Herald Co*, 224 Mich App at 270-271.

Plaintiff argues, however, that the remainder of the requested information does not fall under any exemption and that the trial court erred by holding otherwise. The remaining information includes the following: the redacted police reports from the arresting officers' last ten drunk driving arrests; the police department's inventory, videotaping, and drunk driving procedures; performance standards regarding drunk driving arrests; field sobriety test training manuals; and training records summaries, citizen complaints, and disciplinary reports concerning the arresting officers.¹

Initially, we note that the trial court erred by making a conclusory determination that defendants were exempt from complying with the FOIA. "When ruling whether an exemption under the FOIA prevents disclosure of particular documents, a trial court must make particularized findings of fact indicating why the claimed exemption is appropriate." *Messenger*, 238 Mich App at 532. Here, defendants denied plaintiff's FOIA request on the basis of MCL 15.243(1)(d), which provides that a public body may exempt from disclosure "[r]ecords or information specifically described and exempted from disclosure by statute." In granting defendants summary disposition, the trial court simply stated: "[S]upplying all applicable balancing tests and public policy consideration the court finds the information is legislatively exempt from disclosure under the Freedom of Information Act at MCL 15.231."

Defendants argue that they were exempt from disclosing the information that plaintiff requested because plaintiff could have obtained the information through criminal discovery. We reject this argument. In *Central Mich Univ Supervisory-Technical Ass'n, MEA/NEA v Bd of Trustees of Central Mich Univ*, 223 Mich App 727, 730; 567 NW2d 696 (1997), this Court held that the FOIA does not conflict with the court rules governing discovery. The Court explained:

[W]e do not detect a conflict between the court rules and the FOIA. The FOIA is not a statutory rule of practice, but rather a mechanism for the public to gain access to information from public bodies regardless of whether there is a case, controversy, or pending litigation. The fact that discovery is available as a result of pending litigation between the parties does not exempt a public body from complying with the public records law. We refuse to read into the FOIA the

¹ It is not clear in the record whether plaintiff received the citizen complaints and disciplinary reports. Defendants' brief in support of their motion for summary disposition and brief on appeal initially indicate that plaintiff received the information but then later indicate that such information is exempt under the FOIA. Therefore, we will address these records as if they were not disclosed.

restriction that, once litigation commences, a party forfeits the right available to all other members of the public and is confined to discovery available in accordance with court rule. [*Id.*]

The concurring opinion in *Central Michigan* further stated that “the discovery rules and the FOIA represent ‘two independent schemes for obtaining information’” and “[o]ne was never intended to replace or supplement the other.” *Id.* at 730-731 (HOLBROOK, J., concurring) (citation omitted).

After *Central Michigan* was decided, the FOIA was amended by 1996 PA 553, which added the exemption currently listed under MCL 15.243(1)(v). MCL 15.243(1)(v) is an exemption from disclosure for “[r]ecords or information relating to a civil action in which the requesting party and the public body are parties.” But the amendment did not overrule *Central Michigan*; rather, it simply added to the list of exemptions provided by the FOIA. “Thus, the public body asserting the exemption in MCL 15.243(1)(v) must prove that it is a party to a civil action with the requesting party.” *Taylor*, 272 Mich App at 205. Otherwise, this Court’s ruling in *Central Michigan* applies. *Id.* For instance, in *Kent Co Deputy Sheriff’s Ass’n v Kent Co Sheriff*, 463 Mich 353, 364 n 18; 616 NW2d 677 (2000), our Supreme Court determined that MCL 15.243(1)(v) did not apply to a union’s FOIA request because the underlying case was an arbitration and an arbitration is not a “civil action” as defined in MCR 2.101. The Court further held that the “presence of an alternative ground for obtaining public records does not preclude application of the FOIA.” *Kent Co Deputy Sheriff’s Ass’n*, 463 Mich at 364.

In this case, the exemption in MCL 15.243(1)(v) is not applicable. Courts of this state have not determined that a civil infraction action constitutes a “civil action” for purposes of MCL 15.243(1)(v). Regardless, at the time plaintiff made his FOIA request, he had not yet been charged with any offense. Therefore, because the exemption in MCL 15.243(1)(v) does not apply here, this Court’s holding in *Central Michigan* applies. The fact that discovery may or may not have been available to plaintiff does not exempt defendants from complying with the FOIA. See *Central Mich*, 223 Mich App at 730.

With respect to the police department’s inventory, videotaping, and drunk driving procedures, performance standards regarding drunk driving arrests, and field sobriety test training manuals, defendants argue that the information is exempt from disclosure under MCL 15.243(1)(s). We agree. MCL 15.243(1)(s) exempts public bodies from disclosing public records of a law enforcement agency if such release would “[d]isclose operational instructions for law enforcement officers or agents,” or “[r]eveal the contents of staff manuals provided for law enforcement officers or agents,” unless the public interest in disclosure outweighs the public interest in nondisclosure. MCL 15.243(1)(s)(v)-(vi). “[W]hen an appellate court reviews a decision committed to the trial court’s discretion, such as [balancing the public interest in disclosure and nondisclosure,] the appellate court must review the discretionary determination for an abuse of discretion and cannot disturb the trial court’s decision unless it falls outside the principled range of outcomes.” *Herald Co*, 475 Mich at 472. Here, the police department’s procedures and training manuals would certainly disclose “operational instructions” and the “contents of staff manuals . . . for law enforcement officers.” MCL 15.243(1)(s)(v)-(vi). The public has an interest in such disclosure to the extent that it would serve the core purpose of the FOIA, i.e., for the people to be informed “so that they may fully participate in the democratic

process.” MCL 15.231(2); see *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 282; 713 NW2d 28 (2005) (stating the public’s “interest is best served through information about the workings of government or information concerning whether a public body is performing its core function”). But, plaintiff put forth no evidence that the public would otherwise benefit from disclosure of the requested information. As much as the public has a general interest in knowing the workings of its government, the public also has an interest in the effective performance of law enforcement. Defendants have asserted that disclosing the requested procedures and manuals of the City of Troy Police Department to the general public would weaken the overall performance of law enforcement, as it would, among other things, permit potential criminals to circumvent police procedures and techniques. See *Tobin v Mich Civil Serv Comm*, 416 Mich 661, 669 & n 10; 331 NW2d 184 (1982) (explaining that information specifically exempt from disclosure under the FOIA, such as law enforcement investigative techniques and procedures, would, by definition, cause harm if released). Thus, we affirm the trial court’s determination that the public interest favors nondisclosure, as the determination did not fall outside the principled range of outcomes. See *Herald Co*, 475 Mich at 472; see also *Post-Newsweek Stations, Mich, Inc v Detroit*, 179 Mich App 331, 337; 445 NW2d 529 (1989) (holding that in determining whether a public body has met its burden of proving a claimed exemption, the trial court need not hold an *in camera* review of the contested information if the body’s statements can adequately provide de novo review).

Defendants further argue that the arresting officers’ training records and any citizen complaints and disciplinary reports concerning the arresting officers are exempt under MCL 15.243(1)(s)(ix) because they would “[d]isclose personnel records of law enforcement agencies.” We disagree. While the information would disclose portions of the officers’ personnel records, defendants have not met their burden of proving that a balancing of the public interests favored nondisclosure. See MCL 15.243(1)(s). Defendants argue that plaintiff’s request is self-serving and that disclosure would have no benefit to the public. However, disclosure would serve the core purpose of the FOIA. Records regarding the arresting officers’ training and any complaints and disciplinary actions concerning them are informative of the workings of the City of Troy Police Department and whether the department is performing its core function. See *Detroit Free Press*, 269 Mich App at 282. Indeed, it is arguable that government transparency through the FOIA regarding the misconduct of law enforcement officers would increase public confidence in law enforcement. We reject defendants’ additional argument that the FOIA does not require them to make summaries of the arresting officers’ training records. See MCL 15.233(4). While this is true, plaintiff did not request that defendants make such summaries or create a new record. See MCL 15.233(4)-(5). Rather, plaintiff requested written summaries of the officers’ training records *if such records exist*. Accordingly, because exemptions to disclosure must be narrowly construed and defendants failed to put forth any support for their assertion that the public interest favors nondisclosure and that nondisclosure accords with the intent of the Legislature, we find that the trial court’s conclusion that the public interest favored nondisclosure of the information fell outside the principled range of outcomes. See *Herald Co*, 475 Mich at 472; *Taylor*, 272

Mich App at 204-205; *Messenger*, 238 Mich App at 532. We reverse the trial court's determination in regard to this issue and hold that the information may be disclosed.²

Finally, with regard to the redacted police reports for the arresting officers' last ten drunk driving arrests, defendants present several arguments for nondisclosure. First, defendants restate their argument that public bodies are not required to "make a compilation, summary, or report of information." MCL 15.233(4). But, again, plaintiff's request did not ask defendants to make a compilation, summary, or report. The request was for redacted copies of existing police reports. Second, defendants argue that the reports are exempt from disclosure because it "would be very time consuming to research all police reports to ascertain which documents are responsive to [plaintiff's] request, especially since there are no names or other limiting information provided in the request." Although this may be true, defendants have not provided this Court with a specific statutory exemption that permitted them to deny disclosure of the police reports on the basis that disclosure would be too burdensome. Indeed, no such exemption exists under section 13 of the FOIA. Third, defendants argue that the police reports were exempt from disclosure because defendants were "concerned about protecting the privacy of the individuals who [were] involved in each case." We disagree. Plaintiff specifically requested that defendants redact the police reports by "omitting the names and identifying information of the accused, witnesses, and other identifying information." Moreover, defendants did not indicate to plaintiff that they denied his FOIA request on the basis that the records contained information of a personal nature. Defendants' expression of "concern" did not meet their burden of proving "a clearly unwarranted invasion of an individual's privacy" sufficient to establish an exemption under MCL 15.243(1)(a). See *Taylor*, 272 Mich App at 204-205; *Messenger*, 238 Mich App at 532. Accordingly, the redacted police reports were not exempt under the FOIA, and the trial court's decision in regard to this information is reversed.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Jane M. Beckering

² Defendants argued before the trial court that disclosure of the requested information could divulge the arresting officers' home addresses and family members, but defendants have abandoned that argument on appeal.